

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF ROCKBRIDGE

BRENDA M. ANDERSON

Plaintiff

v.

MATTHEW O'HERRON

Administrator of the Estate of

MATTHEW BRIAN DEAN, Deceased

NEW PRIME, INC.

c/o INCORP SERVICES, INC.

Registered Agent

7288 Hanover Green Drive

Mechanicsville, VA 23111

(Hanover County)

Defendant

Case No. _____

COMPLAINT

Comes now the Plaintiff, BRENDA M. ANDERSON, by counsel, and moves for judgment against the Defendants, MATTHEW O'HERRON, ADMINISTRATOR of the ESTATE OF MATTHEW BRIAN DEAN, and NEW PRIME INC., jointly and severally, on the following grounds and in the amount set forth below.

FERRIS & EAKIN, P.C.
ROANOKE, VIRGINIA

**EXHIBIT
A**

1. On or about May 28, 2018 at approximately 12:30 pm, Plaintiff, BRENDA M. ANDERSON, was operating her 1996 Toyota 4Runner SR5, traveling in a southerly direction in the left lane of Interstate 81, near mile marker 180 in Rockbridge County, Virginia.
2. At or about that same time and place, Defendant's decedent, MATTHEW BRIAN DEAN ("Dean"), a resident of Live Oak, Florida, was operating a Commercial Motor Vehicle ("CMV"), a 2016 Peterbilt Tractor Trailer, owned and operated by Defendant NEW PRIME, INC. ("New Prime") and was also traveling in a southerly direction in the right lane of Interstate 81, near mile marker 180 in Rockbridge County, Virginia.
3. NEW PRIME is a Nebraska corporation registered to conduct business in the Commonwealth of Virginia.
4. At or about the same time and place, Dean failed to control his CMV, failed to keep a proper lookout, made an unsafe lane change, and failed to maintain control of his CMV. As a result, the tractor trailer he was driving departed from the right lane, crossed into the left-hand lane of southbound Interstate 81, and struck the passenger side of Plaintiff's vehicle.
5. Upon impact with the right rear of Plaintiff's vehicle by Dean, the 4Runner was spun around in the roadway causing it to overturn and then roll down the highway at a high rate of speed. Plaintiff's vehicle eventually traveled off the right side of the roadway and struck an embankment before coming to rest off the side of the highway.

NEGLIGENCE OF DEFENDANT DEAN

6. Plaintiff incorporates paragraphs 1 to 5 by reference and further alleges as follows:
7. At the same time and place, Dean had a duty to operate New Prime's CMV with reasonable care and due regard for others using the road considering the conditions of the highway at the time and to follow all regulations applicable to operation of a CMV in Virginia.
8. Notwithstanding his duties, Dean did then and there so carelessly, recklessly, and negligently operate his vehicle that he drove into the side of Plaintiff's vehicle with such force as caused Plaintiff's vehicle to overturn multiple times.
9. Dean was negligent in that he:
 - a. Failed to maintain proper control of his vehicle.
 - b. Failed to keep a proper lookout for overtaking vehicles.
 - c. Made an unsafe lane change.
 - d. Failed to drive on the right side of the highway.
 - e. Failed to exercise reasonable care under the circumstances then and there existing.
 - f. Drove into right rear side of Plaintiff's vehicle causing it to overturn and roll down the highway.
 - g. Failed to signal an intention to change lanes
10. Dean's negligence is evidenced by his violation of Federal Motor Carrier Safety Regulations ("FMCSR") Section 383.110 "Required Knowledge and Skills; General

Requirement;" FMCSR Section 383.111(a)(10) "Required Knowledge; Space Management;" and FMCSR Section 383.113(c) "Required Skills; Safe On-Road Driving Skills." These regulations are incorporated by reference into the Virginia Administrative Code, 19 VAC 30-20-80, and are applicable to Dean, 19 VAC 30-20-40, with no exceptions, 19 VAC 30-20-190.

11. Dean was also negligent in that he violated Virginia Code Sections 46.2-802 (failure to drive on the right side of the highway), 46.2-804 and 46.2-341.20(A)(4) (improper lane change), and 46.2-853 (failure to maintain proper control).
12. Dean's violations of the Virginia Code, Virginia Administrative Code and FMCSR constitute negligence *per se*.
13. The negligence of Dean as alleged herein was a direct and proximate cause of Plaintiff's injuries.

NEGLIGENCE OF DEFENDANT NEW PRIME, INC.

14. Plaintiff incorporates paragraphs 1 to 13 by reference and further alleges as follows:
15. The negligence of Defendant, New Prime, is evidenced by its violation of FMCSR Section 390.11 "Motor Carrier to require observance of driver regulations," incorporated by reference in the Virginia Administrative Code (19 VAC 30-20-80) and applicable to New Prime (19 VAC 30-20-40), without exception, in that:
 - a. New Prime failed to require Dean to have the knowledge and skills necessary to operate a CMV under FMCSR Section 383.110 "Required Knowledge and Skills; General Requirement."

- b. New Prime failed to require Dean to understand the procedures and techniques for controlling the space around his CMV, violating FMCSR Section 383.111(a)(10) "Required knowledge; Space management."
 - c. New Prime failed to require Dean to possess safe on-road driving skills, violating FMCSR Section 383.113 (c) "Required skills; Safe on-road driving skills."
16. New Prime's violations of the Virginia Administrative Code and the FMCSR constitutes negligence *per se*.
17. The negligence of Defendant, New Prime, was a direct and proximate cause of Plaintiff's injuries.

RESPONDEAT SUPERIOR

18. Plaintiff incorporates paragraphs 1 to 17 by reference and further alleges as follows:
19. NEW PRIME, INC. is incorporated in Nebraska and its offices and principal place of business are located at 2740 N. Mayfair Avenue, Springfield, MO 65803.
20. On May 28, 2018 Dean was acting in the scope of his employment as an employee, servant and/or agent for NEW PRIME, INC.
21. Defendant NEW PRIME, INC. is liable for the negligence of Dean under the doctrine of *respondeat superior* and/or vicarious liability.

QUALIFICATION OF ADMINISTRATOR

22. Plaintiff incorporates paragraphs 1 to 21 by reference and further alleges as follows:
23. Matthew Brian Dean died on May 28, 2018 in Rockbridge County, Virginia.

24. On Motion of the Plaintiff in case number CL20000309-00, the Rockbridge County Circuit Court entered an Order appointing Matthew O'Herron Administrator of the Estate of Matthew Brian Dean pursuant to Virginia Code Section 64.2-454.

DAMAGES

25. Plaintiff incorporates paragraphs 1 to 24 by reference and further alleges as follows:

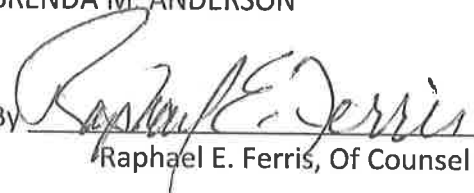
26. As a direct and proximate result of the negligence of MATTHEW BRIAN DEAN and NEW PRIME, INC., jointly and severally, Plaintiff, BRENDA M. ANDERSON, has sustained serious and painful injuries, some of which are permanent; has suffered physical pain, discomfort and mental anguish, and these will continue in the future; has suffered permanent scarring; has incurred in the past and will continue to incur in the future substantial medical and hospital bills in an effort to be cured of or treated for her injuries; will continue to suffer severe physical pain and mental anguish; has incurred lost income; and has been prevented from attending to her business and personal affairs for a period of time.

WHEREFORE, Plaintiff, BRENDA M. ANDERSON, by counsel, demands judgment against the Defendants, Matthew O'Herron, Administrator of the Estate of MATTHEW BRIAN DEAN, deceased, and NEW PRIME, INC., jointly and severally, in the amount of Six Hundred Thousand and 00/100 Dollars (\$600,000.00) and her costs in this behalf expended, together with interest at the judgment rate since May 28, 2018, and the fees incurred by her to retain and qualify the Administrator of the Estate of Matthew Brain Dean.

A trial by jury is demanded.

BRENDA M. ANDERSON

By

A handwritten signature in dark ink, appearing to read "Raphael E. Ferris", is written over a horizontal line.

Raphael E. Ferris, Of Counsel

Raphael E. Ferris, VSB # 21973
FERRIS & EAKIN, P.C.
22 Luck Avenue SW
Roanoke, Virginia 24011
540-344-3233
540-344-6608 (fax)

FERRIS & EAKIN, P.C.
ROANOKE, VIRGINIA

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF ROCKBRIDGE

IN RE:

CL 20000309-00

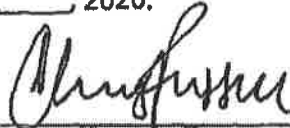
ESTATE OF MATTHEW BRIAN DEAN

ORDER

This day came the Petitioners, BRENDA M. ANDERSON and CARA ANDERSON, by counsel, and petitioned this Court to appoint Matthew O'Herron as the Administrator of the Estate of Matthew Brian Dean, pursuant to Section 64.2-454 of the Code of Virginia. Upon presentation of the Police Crash Report prepared by the Virginia State Police listing the date of death of Matthew Brian Dean as May 28, 2018, and articles from wset.com and *The Roanoke Times'* Roanoke.com website dated May 28, 2018 which also identified Matthew Brian Dean as the driver of a tractor trailer who died at the scene of a crash in Interstate 81 on May 28, 2018, it is hereby

ORDERED that Matthew O'Herron be appointed as the Administrator of the Estate of Matthew Brian Dean pursuant to Section 64.2-454 of the Code of Virginia.

ENTERED this 16 day of April, 2020.



Judge

I ask for this:



Raphael E. Ferris, VSB # 21973

Ferris & Eakin, P.C.

22 Luck Avenue SW

Roanoke, Virginia 24011

540.345.1000

540.344.6608 (fax)

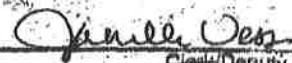
ray@rvalaw.com

Counsel for Petitioners

IN TESTIMONY that the foregoing is a true copy taken from the records of this court, I hereby set my hand and affix the SEAL of this Court.

This 17th day of April, 2020

Michelle M. Trout, Clerk
Circuit Court of Rockbridge County, Virginia
by:



Clerk/Deputy Clerk